

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

DEMOCRACY FORWARD
FOUNDATION,
1333 H Street NW, 11th Floor
Washington, D.C. 20005,

Case No.

Plaintiff,

v.

U.S. DEPARTMENT OF
TRANSPORTATION,
1200 New Jersey Avenue, SE
Washington, D.C. 20590; and

FEDERAL AVIATION
ADMINISTRATION,
800 Independence Avenue, SW
Washington, D.C. 20591,

Defendants.

COMPLAINT

1. Plaintiff Democracy Forward Foundation (“Democracy Forward”) brings this action pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), against Defendants the U.S. Department of Transportation (“DOT”) and the Federal Aviation Administration (“FAA”) to compel compliance in producing documents that would shed light on the role Airlines for America (“A4A”), a trade association and lobbying group for major airlines, has played in shaping DOT and FAA policies and regulations.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

3. Venue is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

4. Because Defendants have failed to comply with the applicable time limit provisions in FOIA, Plaintiff is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i).

PARTIES

5. Plaintiff Democracy Forward is a not-for-profit organization incorporated under the laws of the District of Columbia and based in Washington, D.C. Plaintiff works to promote transparency and accountability in government, in part, by educating the public on government actions and policies.

6. Defendant DOT is a federal agency within the meaning of FOIA, *see* 5 U.S.C. § 552(f)(1), and is headquartered in Washington, D.C. DOT has possession, custody, and control of records to which Plaintiff seeks access.

7. Defendant FAA is a federal agency within the meaning of FOIA, *see* 5 U.S.C. § 552(f)(1), and is headquartered in Washington, D.C. FAA has possession, custody, and control of records to which Plaintiff seeks access.

FACTUAL ALLEGATIONS

8. On June 27, 2018, Democracy Forward submitted a FOIA request to each Defendant.

DOT FOIA Request

9. Democracy Forward's FOIA request to the DOT sought the following records for the time period of January 20, 2017 to the date the search is conducted:

(1) Any and all records, including attachments, sent to or from individuals and representatives, employees, or lobbyists of Airlines for America ("A4A"), including any communications sent to or received from an account with the domain

- “@airlines.org”. Please search the calendars, inboxes, and outboxes of the following government employees: (a) Daniel Elwell, (b) Marty Fiorentino, (c) Marianne McInerney, (d) Anthony Pugliese, (e) Finch Fulton, (f) Blane Workie, (g) Judith Kaleta, (h) Andy Post, (i) Sean McMaster, (j) Anthony Bedell, (k) Chris C. Brown, (l) Mike Britt, (m) Geoff Burr.
- (2) Any and all records, communications, attachments, calendars, official schedule, meeting invitation, phone logs, or any additional record category within the calendars, inboxes, and outboxes of the above-named government employees (see search criteria 1(a)-(ii)) containing any of the following search terms: Airlines for America, A4A, Pinkerton, Paul McGraw, David Berg, Carrier regulatory reform working group, Carrier reg reform, FACA, federal advisory committee, wheelchair, Dao, or flight 3411.

10. The FOIA request further sought a waiver of all fees associated with the request.

11. On June 28, 2018, Plaintiff received an acknowledgement letter from the DOT regarding its FOIA request.

12. As of the date of this Complaint, DOT has neither informed Plaintiff whether it will comply with Plaintiff’s FOIA request nor produced requested records.

FAA FOIA Request

13. Democracy Forward’s FOIA request to the FAA sought the following records for the time period of January 20, 2017 to the date the search is conducted:

- (1) Any and all records, including attachments, sent to or from individuals and representatives, employees, or lobbyists of Airlines for America (“A4A”), including any communications sent to or received from an account with the domain

“@airlines.org”. Please search the calendars, inboxes, and outboxes of the following government employees: (a) Daniel Elwell, (b) Carl Burleson, (c) Tina Amereihn, (d) Teri Bristol, (e) Ali Bahrami, (f) Charles M. Trippe, Jr., (g) Jeannie Shiffer, (h) Kate Howard, (i) Brian K. Langdon, (j) Nan Shellabarger, (k) Michelle Guynn, (l) Chris C. Brown, (m) Greg Martin, (n) Mike Britt, (o) Megan Bailey, (p) Tony Willet, (q) Carl Burleson, (r) George Nield, (s) Bailey Edwards, (t) Colleen Donovan, (u) Julie Marks, (v) Beth White, (w) Kevin Welsh, (x) Jodi McCarthy, (y) Lauren Casselman.

(2) Any and all records, communications, attachments, calendars, official schedule, meeting invitation, phone logs, or any additional record category within the calendars, inboxes, and outboxes of the above-named government employees (see search criteria 1(a)-(ii)) containing any of the following search terms: Airlines for America, A4A, Pinkerton, Paul McGraw, David Berg, Carrier regulatory reform working group, Carrier reg reform, FACA, federal advisory committee, wheelchair, Dao, or flight 3411.

14. The FOIA request further sought a waiver of all fees associated with the request.

15. On November 21, 2018, FAA acknowledged having received Plaintiff's FOIA request and notified Plaintiff that FAA had assigned it FOIA number 2019-001554.

16. Despite some limited discussion with FAA about narrowing the request and an anticipated production schedule, FAA has not made any production of documents.

* * *

17. As of the date of this Complaint, Defendants DOT and FAA have both failed to notify Plaintiff whether they will comply with the FOIA requests, *see* 5 U.S.C. § 552(a)(6)(A)(i), whether they will produce all requested records, or whether they will demonstrate that they are

lawfully exempt from production, *see id* § 552(a)(6)(C). Nor have Defendants notified Plaintiff of the scope of any responsive records Defendants intend to produce or withhold, and the reasons for any withholdings, or informed Plaintiff that it may appeal any adequately specific, adverse determination.

18. Because the DOT and FAA have “fail[ed] to comply with the applicable time limit provisions” of the FOIA, even with the benefit of any extensions of time that both agencies might have claimed, Plaintiff is “deemed to have exhausted [its] administrative remedies.” *Id.* § 552(a)(6)(C)(i).

CLAIM FOR RELIEF

19. Plaintiff incorporates by reference the foregoing paragraphs as if fully set forth herein.

20. By failing to respond to Plaintiff’s request within the statutorily prescribed time limit, Defendants have violated their duties under 5 U.S.C. § 552, including but not limited to the duties to conduct a reasonable search for responsive records, to take reasonable steps to release all non-exempt information, and to not withhold responsive records.

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Order Defendants to conduct a search for any and all responsive records to Plaintiff’s FOIA request using search methods reasonably likely to lead to discovery of all responsive records;

2. Order Defendants to produce, by a date certain, any and all non-exempt responsive records and a *Vaughn* index of any responsive records withheld under a claim of exemption;

3. Enjoin Defendants from continuing to withhold any and all non-exempt

responsive records;

4. Order Defendants to grant in full Plaintiff's request for a fee waiver;
 5. Award Plaintiff its costs, attorneys' fees, and other disbursements for this action;
- and
6. Grant any other relief this Court deems appropriate.

Dated: April 25, 2019

Respectfully submitted,

/s/ Karianne M. Jones

Javier M. Guzman (D.C. Bar No. 462679)
Karianne M. Jones (D.C. Bar No. 187783)
Democracy Forward Foundation
P.O. Box 34553
Washington, D.C. 20043
(202) 448-9090
jguzman@democracyforward.org
kjones@democracyforward.org

Attorneys for Plaintiff